

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Civil Action No.: 5:08-CV-00460-FL

DUKE ENERGY PROGRESS, INC.,)
)
Plaintiff,)
v.)
)
3M COMPANY, et al.,)
)
Defendants.)
)

Civil Action No.: 5:08-CV-00463-FL

CONSOLIDATION COAL COMPANY,)
)
Plaintiff,)
v.)
)
3M COMPANY, et al.,)
)
Defendants.)
)

ELEVENTH REPORT OF SPECIAL MASTER

Pursuant to Rule 53(e) of the Federal Rules of Civil Procedure and paragraph B.5. of the Court's appointment orders of January 8, 2014 (460 DE-1387; 463 DE-1379), and as further directed pursuant to the Court's Order of January 13, 2016 (460 DE-1779; 463 DE-1770), as amended by the Court's Order of January 14, 2016, I respectfully submit the following report for the period from January 1, 2016 through April 11, 2016. My Tenth Report of Special Master ("Tenth Report"), filed on January 5, 2016 (460 DE-1775; 463 DE-1766), covering the period from September 26, 2015, through December 31, 2015, reported on the continuing progress of

the parties in documenting settlements reached before, during and immediately after formal ADR settlement meetings held in September, 2016. It also reported on progress made by the plaintiffs and nearly all defendants and third-party defendants (together, “defendants”) in their October, 2015, negotiations with the United States, which resulted in a tentative agreement in principle on key material terms of an anticipated consent decree.

In its Order of January 13, 2016, the Court directed me, consistent with recommendations contained in my Tenth Report, to continue serving as special master in a limited “standby” status and to include in the present report “the status of settlement efforts now underway, including any changes in status from that reported [in my Tenth Report].” Upon an opposed motion of the plaintiffs, the Court entered an Order on March 30, 2016 (460 DE-1802; 463 DE-1793) extending from April 22, 2016, to July 22, 2016, certain deadlines related to dispositive motions and motions to exclude testimony of expert witnesses.

Throughout the present reporting period, I have monitored new filings and the Court’s orders. My occasional communications with counsel for the parties and the United States were pursuant to a standing authorization from Magistrate Judge Gates to engage parties in *ex parte* communications regarding settlement and directly related issues. Magistrate Judge Gates has reviewed and approved this Eleventh Report.

Settlement

During the reporting period, the plaintiffs and defendants have continued to complete and document settlements reached prior to, at and following the ADR sessions. Numerous stipulations of dismissal have been filed. Twenty settlements not contingent on participation of involved plaintiffs and defendants in a consent decree with the United States have not yet been

reduced to a filed stipulation of dismissal. Progress toward that end is ongoing. I will continue to urge prompt completion.

In March, 2016, I was advised by counsel for one defendant and the plaintiffs that they could not reach agreement concerning the language of a settlement reached after the September, 2015, formal ADR meetings. I reviewed relevant communications and discussed the matter with counsel. It appears that the dispute arose out of the absence of a meeting of minds concerning a material term of settlement, notwithstanding good faith efforts of the parties. I offered suggestions as to resolution of the matter, which remains unresolved. I will continue to encourage the parties to reach a final agreement.

During the reporting period, the plaintiffs and all but six defendants, have diligently negotiated with the United States and with one another to reach agreement concerning final terms of an anticipated consent decree and the means and terms by which obligations of settling parties under the consent decree would be met. Counsel for certain parties and the United States have advised me that the United States recently concluded internal consultations concerning certain revised and more specific proposed terms of the consent decree and forwarded a confidential revised form of consent decree to the parties involved. Negotiations between the parties and the United States are ongoing. Counsel for the negotiating settling parties should continue to endeavor to: promptly reach agreement with representatives of the United States on consent decree terms they will recommend for final approval; simultaneously conclude their internal implementation-related negotiations; and provide to the United States lists of the Ward parties that will and will not be parties to the consent decree. If they succeed, a consent decree can be lodged with the Court by June, 2016. Thereafter, following a period of publication of a notice and thirty to sixty days of public comment, and subject to the United States considering and addressing any public comments, the United States would seek the judicial approval and entry of the consent decree.

Recommendation Concerning My Appointment

I recommend that my appointment as Special Master continue until a settlement between settling parties and the United States is lodged with the Court, or until such later date or event as the Court may deem appropriate. Unless the Court wishes to add other tasks during remainder of my service, I intend to monitor filings and orders and remain generally informed and available to the parties and United States in a limited "standby" role. My invoices for services and expenses for this limited role are not likely to exceed \$1,000 per month. I anticipate that the Court will direct me to submit at least one additional report.

Budget and Compensation

My invoice for services and expenses in December, 2015, net of a credit for prior reimbursement of a telecommunications expense that I inadvertently previously double-paid and invoiced, was \$76.37. The total of my invoices for services and expenses in 2015 was \$79,205.29, which was in line with revised budget forecasts provided to billing liaison counsel in October and early November, 2015. My invoices for services and expenses in January, February and March, 2016, were in the amounts of \$345.00, \$45.00 and \$495.00, respectively. Notwithstanding the shortfall in payments to the trust account mentioned in my Tenth Report, my invoices have been paid on time and in full. At present, I do not plan to invoice for time and any expenses associated with organizing my files for long-term retention.

Respectfully submitted on April 11, 2016.

/s/ David O. Ledbetter
Special Master
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CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2016, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ David O. Ledbetter
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